

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

SEP 04 2007

DATE: SEPTEMBER 4, 2007

DOCKET NO: RR-03639A-07-0398

TO ALL PARTIES:

DOCKETED BY	
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Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD COMPANY  
(AT-GRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 13, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

SEPTEMBER 18, 2007 AND SEPTEMBER 19, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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2007 SEP -4 P 4: 25

AZ CORP COMMISSION  
DOCKET CONTROL

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF  
9 THE TOWN OF GILBERT, ARIZONA TO  
10 UPGRADE A CROSSING OF THE UNION  
11 PACIFIC RAILROAD AT THE INTERSECTION  
12 OF POWER AND PECOS ROADS IN MARICOPA  
13 COUNTY, ARIZONA, AAR/DOT NO. 741-833-U.

DOCKET NO. RR-03639A-07-0398

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

10 DATE OF HEARING: August 28, 2007

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mr. Terrance L. Sims, Beaugureau, Zukowski, Hancock,  
14 Stoll & Schwartz, P.C., on behalf of the Union Pacific  
15 Railroad; and

16 Mr. Charles Hains and Ms. Kenya Collins, Staff  
17 Attorneys, Legal Division, on behalf of the Safety  
18 Division of the Arizona Corporation Commission.

17 **BY THE COMMISSION:**

18 On June 29, 2007, the Town of Gilbert, Arizona ("Town" or "Gilbert") filed with the Arizona  
19 Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad  
20 ("Railroad") to upgrade an existing crossing at the intersection of Power and Pecos Roads in Gilbert,  
21 Maricopa County, Arizona at AAR/DOT NO. 741-833-U ("Application").

22 On July 17, 2007, by Procedural Order, the proceeding was scheduled for hearing on August  
23 28, 2007.

24 On August 28, 2007, a full public hearing was convened before a duly authorized  
25 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's  
26 Safety Division Railroad Safety Section ("Staff") and the Railroad were present with counsel.  
27 Counsel for the Railroad commented in favor of the Application. The Town Engineer was also  
28

1 present. At the conclusion of the hearing, the matter was taken under advisement pending submission  
2 of a Recommended Opinion and Order to the Commission.

3 \* \* \* \* \*

4 Having considered the entire record herein and being fully advised in the premises, the  
5 Commission finds, concludes, and orders that:

6 **FINDINGS OF FACT**

7 1. On June 29, 2007, Gilbert filed an Application in which it requested an Opinion and  
8 Order from the Commission approving an agreement between the Town and the Railroad to upgrade  
9 the existing public crossing at the intersection of Power and Pecos Roads at AAR/DOT No. 741-833-  
10 U in the following manner: by widening the existing crossing from two lanes to six lanes to eliminate  
11 a bottleneck where both roadways cross the Railroad's tracks, which run diagonally through the  
12 intersection; the existing roadway will be widened from one lane in each direction to three lanes in  
13 each direction with turning lanes; raised center medians will be constructed; the existing warning  
14 devices will be replaced with new 12-inch LED automatic warning devices with cantilevers and with  
15 automatic gates; and a new concrete crossing surface will be installed.

16 2. On August 13, 2007, the Town filed certification that it provided notice of the  
17 Application and hearing thereon to the Railroad and to all other interested parties by publication in a  
18 newspaper of general circulation.

19 3. The hearing was held as scheduled on August 28, 2007.

20 4. The Application provides for the widening of both Power and Pecos Roads where they  
21 intersect with the Railroad's tracks which run diagonally through the intersection with the Railroad  
22 installing new 12-inch LED flashing lights on cantilevers with opposing automatic gates, and a new  
23 crossing surface.

24 5. Based on the record, the improvements described in this proceeding are part of a larger  
25 three to four million dollar project which provides for the widening of the Power and Pecos Roads.  
26 The Town plans to put the project out for bid in the fall of 2007 and anticipates construction being  
27 completed by 2009.

28 6. Richard Allred, the Town Engineer, testified that it is not economically feasible

1 presently to construct a grade-separated crossing in the foreseeable future because there is no funding  
2 for it in the Town's Capital Improvements budget. Additionally, Mr. Allred testified that the terrain  
3 and the skew of the Railroad's tracks diagonally through the intersection would make it extremely  
4 difficult for the construction of a "Shoefly" to re-route train traffic during construction of a grade-  
5 separated crossing and the roadways' users would be heavily impacted by a severe disruption in  
6 traffic flow during construction of a grade-separated crossing.

7       7. Further, Mr. Allred also described the following factors that should be considered with  
8 the possible construction of a grade-separated crossing: the possible disruption of storm runoff in  
9 earthen floodways, which were built 25 years ago by the Maricopa County Flood Control District,  
10 and whether highway construction by the State of Arizona proceeds alleviating the need for a grade-  
11 separated crossing in the future.<sup>1</sup>

12       8. According to a 2006 traffic study by the Town's Public Works Department, average  
13 daily traffic ("ADT") at the crossing is 26,818 vehicles a day. This traffic flow already exceeds an  
14 outdated 1999 traffic study by Maricopa County which projected ADT of only 17,200 vehicles a day  
15 in 2010 and ADT of 35,600 vehicles a day by 2020.

16       9. Staff's witness, Chris Watson, testified that the cost for the installation of the crossing  
17 upgrade as provided in the Application is proper and the Town will pay approximately \$474,000 for  
18 the crossing upgrade portion of the roadway widening project. Mr. Watson further related there has  
19 only been one non-injury accident at the crossing since its inception in 1974.

20       10. Staff has recommended that the Application be approved, and taking into  
21 consideration the current Level of Service of "F" for the roadway user, believes that any deviation  
22 causing further delay from the Town's current proposed plans would be detrimental to the public.  
23 Staff further believes that the improvements are in the public's interest and are reasonable. However,  
24 Staff feels that the Town of Gilbert should re-address and consider grade-separation of this crossing  
25 in the next five to ten years.

26 \_\_\_\_\_  
27 <sup>1</sup> Under consideration by the Arizona Department of Transportation for the area in the future is a corridor for a north south highway,  
28 which could reduce automobile traffic at the Power and Pecos Roads crossing and reduce the need for a grade-separated crossing  
further since only six to eight trains pass through the crossing on a daily basis.

**CONCLUSIONS OF LAW**

1  
2 1. The Commission has jurisdiction over the parties and over the subject matter of the  
3 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
4 40-337.01.

5 2. Notice of the Application was provided in accordance with the law.

6 3. Installation of the crossing upgrade is necessary for the public's convenience and  
7 safety.

8 4. Pursuant to A.R.S. §§ 40-336 and 337, the Application should be approved as  
9 recommended by Staff.

10 5. After installation of the crossing, the Railroad should maintain the crossing in  
11 accordance with A.A.C. R-14-5-104.

**ORDER**

12  
13 IT IS THEREFORE ORDERED that Town of Gilbert's Application is hereby approved.

14 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the  
15 crossing upgrade as described in the Application within fifteen months from the effective date of this  
16 Decision.

17 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the  
18 Commission, in writing, within ten days of both the commencement and the completion of the  
19 crossing upgrade, pursuant to A.A.C. R14-5-104.

20 ...

21 ...

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1 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific  
2 Railroad Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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6  
7 CHAIRMAN

COMMISSIONER

8  
9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10  
11 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim  
12 Executive Director of the Arizona Corporation Commission,  
13 have hereunto set my hand and caused the official seal of the  
14 Commission to be affixed at the Capitol, in the City of Phoenix,  
15 this \_\_\_\_ day of \_\_\_\_\_, 2007.

16 DEAN S. MILLER  
17 INTERIM EXECUTIVE DIRECTOR

18 DISSENT \_\_\_\_\_

19  
20  
21 DISSENT \_\_\_\_\_

MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD

2 DOCKET NO.: RR-03639A-07-0398

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5 Terrance L. Sims  
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17 Richard Allred, P.E.  
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20 Brian Lehman, Chief  
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